In The

Supreme Court of the United States

October Term, 1976

No. 76-864

CITY OF LAFAYETTE, LOUISIANA AND
CITY OF PLAQUEMINE, LOUISIANA,
Petitioners

v.

LOUISIANA POWER & LIGHT COMPANY,
Respondent

AMICI CURIAE BRIEF OF NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, ET AL.

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INDEX

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (Continued)

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AMICI CURIAE BRIEF OF NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION ("NRECA"), ET AL.*

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*The names and addresses and certain pertinent related information of all the *Amici Curiae* are set forth in Appendix "A" of this brief. These *Amici Curiae* will hereafter ordinarily be, collectively, called "Cooperatives," or, singularly, "Cooperative."

INTERESTS OF THE AMICI CURIAE IN THIS PROCEEDING

The some 1,000 rural electric cooperatives comprising NRECA's membership are located in 46 of the 50 states, including Alaska. Each of the other *Amici Curiae* is a member of NRECA. Each of the distribution electric cooperative members of NRECA furnishes retail electric service to as many as 50,000,

and to as few as only a very few hundred, patron-members, the average size of these distribution electric cooperatives being in the order of only 9,000 patron-members. Altogether, the distribution electric cooperatives furnish electric service to over 9,000,000 meters — residential, farm, commercial, institutional, governmental and industrial — representing an estimated 25,000,000 men, women and children in the United States. *See 1976 Annual Statistical Report, Rural Electrification Borrowers,* Rural Electrification Administration, United States Department of Agriculture (REA Bulletin 1-1).

The Cooperatives came into existence beginning in the mid 1930's, although it was not until after the end of World War II that their growth to maturation was accomplished. They came into existence because in the nation's rural areas electric service was unavailable from the two other major types of entities engaged in the retail electric business, the investor-owned power companies, such as the Respondent, and the municipal electric systems, such as the Petitioners.

Due to the relatively higher cost (i.e., fewer customers per mile of line / higher investment per installation) of extending and furnishing electric service in the rural areas, the Federal Government, initially by executive order of President Franklin D. Roosevelt in 1935 and then, permanently, by a formalized act of Congress on May 20, 1936, 49 Stat. 1363, *et seq.*, 7 U.S.C. §901, *et seq.*, inaugurated the national rural electrification program. The cardinal means by which this program was to be developed—its objective being to make service available on an economically feasible basis to all rural segments of our society—was the lending of capital funds to electric cooperative corporations and others so as to enable them to finance, over long terms and at reasonable interest rates, the construction of electric facilities. In order to assure that this new national objective was directed to the rural areas only, the Congress restricted the Rural Electric Administration Administrator (hereafter "REA" and "Administrator", respectively) so as to permit him to lend funds for the construction of facilities to

serve only those persons in "rural areas" who were not receiving central station service. 49 Stat. 1363; 7 U.S.C. §902. The term "rural area" was defined to mean "any area . . . not included within the boundaries of any city, village or borough having a population in excess of fifteen hundred inhabitants . . ." but the term includes "both the farm and nonfarm population" of such areas. 49 Stat. 1367; 8 U.S.C. §913.

Both before REA's inception and since, America has been a burgeoning society—in virtually every sense: population, industrially, gross national product, new and expanded cities and, since REA's inception, even two new states. The long, pent-up need and desire for electric service on the part of the nation's rural people impelled tremendous and optimistic grassroots response to accomplish REA's objective. Unfortunately, (or fortunately, depending upon one's position on the matter) the federal program of rural electrification had the effect of suddenly awakening what until that time had been two apparently "sleeping giants"—the investor-owned electric utilities and many municipal electric systems throughout the land.

What happened is of such common knowledge that we respectfully submit this Honorable Court should take cognizance thereof: All of these three kinds of entities—Cooperatives, investor-owned utilities and municipal electric systems—began a "race" to extend and furnish electric service to those rural sections of the nation which, because they were the most densely populated, offered promise of greatest financial feasibility. While the result was that the great majority of the Cooperatives were deprived of the economic benefits of serving some of the then more profitable segments of the national rural society (with the consequence that their cost of operation and therefore their supporting retail rates were higher than they otherwise would have been), the national objective of electrifying rural America was accomplished.

Today, with few and negligible exceptions, electric service is available to every person who desires it and to virtually any

locale in which new premises might locate and there create a new need for it. (Lest it be inferred otherwise, we hasten to state that, while the great majority of rural Americans and even greater prepondance of America's rural *geographic areas* are being served by the Cooperatives, a substantial number of rural Americans, especially those living in the more thickly settled rural areas, are served by some 200 major investor-owned utilities and by a good many of the some 2,000 municipal electric systems. *See National Power Survey,* Federal Power Commission, Vol. I, 1964.)

Nonetheless, the successful expansion of the electrical industry in America so as to make service available to virtually every inhabitant and locale was and is generally characterized by a vigorous competition at the retail level, unless and except to the extent that the states, through their respective regulatory processes or otherwise, have brought a halt or substantial retardation to the almost predatory competition that has prevailed. (We shall have need later in this brief to allude to this increasing effort on the part of the states. Suffice it to say, here, that the competition among cooperatives, power companies and municipalities at the retail level has not always featured the use of Queensberry Rules, much less impartial regulatory referees.)

The continuing burgeoning of our society and the related socio-spacial-economic dynamics that have attended it have inevitably spawned direct, combative confrontation of these competing institutions. The record before this Court is not replete with even allegations, much less supporting proofs, to demonstrate the many ways in which and the degree to which this combat has been taking place. We respectfully put it to the Court, however, that the record, together with the sheer number and nature of these *Amici Curiae,* makes it clear that the one and only issue of law involved in this stage of this proceeding, commands a wide-spread national concern; and that it simply could not command such a concern unless the evils about which the Respondent has counterclaimed were

pervasive and, to those many competing entities which are the targeted victims of those evils, profoundly damaging.

Many, indeed most, states afford one degree or another of regulation and territorial protection to both the investor-owned utilities and the electric cooperatives (and, in a very few states, to municipal electric systems.) (*See Legal Aspects of Territorial Protection for REA Financed Cooperatives,* U.S.D.A. General Counsel, pp 71-165, January, 1970, for state statutes enacted on this subject since January, 1970, See Appendix "B" of this brief.) But, with respect to areas to which Cooperatives pioneer electric service but thereafter become annexed by municipalities of over 1,500 population, state laws, as we shall see, afford different kinds and degrees of protection (usually, only limited protection and sometimes worse than none at all). The municipal practice of pursuing tie-in arrangements, (a *per se* violation of the Sherman and Clayton Acts, *infra,*) is such that, predictably, it has an effect upon first, the suburbanization, and finally, the urbanization of what were once characteristically rural communities. This is true for the very simple reason that other municipal services, such as water, sewage, gas and garbage collection, come into an area only because a new customer is willing to meet the compelled condition of taking municipal *electric* service (and thereby subsidizing several or all of the municipal services being rendered to the actual inhabitants of such municipalities). Indeed, the condition is not exacted from only newly locating customers; it may be pursued for the purpose of "pirating" the business of customers already being served by cooperatives or investor-owned utility companies.

In many instances, the power companies, and even in some instances the cooperatives, are the franchised electric suppliers in municipalities which do not own or operate their own electric systems. Both of these types of entities, however, inevitably are at a severe competitive disadvantage when the onerous practice of tie-in arrangements is vigorously (and usually clandestinely) pursued against them by municipalities which *do* own and operate their electric distribution systems.

While it may of course be said that tie-in arrangements, pursued by municipalities outside their corporate limits, predictably will inflict damage on both types of entities, that damage, for the purpose of this brief, should nonetheless be differentiated. *Relatively*, the detriment to cooperatives is far greater than to investor-owned companies such as Respondent, for two primary reasons: First, they are either not acquiring, or are actually losing, customers in the *most profitable* areas in which they have pioneered service — without benefit of "just compensation" since no "due process" proceeding is afforded; and second, the resulting suburbanization and, ultimately, urbanization of the affected areas not only comes about sooner but comes about when otherwise it might not come about at all.

This second reason should perhaps be somewhat elaborated: In some states, among them Louisiana, Indiana, and South Carolina annexation brings with it the right of the municipality to expropriate power company as well as cooperative "going concern" facilities. (*See* LA. Revised Statutes, Title 19, section 101 *et seq.*, and *City of Thibodeaux* v. *Louisiana Power & Light Co.*, 373 F.2d 870; Bunn's Indiana Statutes, 1970 Supp., §55-4418A and *City of Greenville* v. *Hancock County REMC*, 277 N.E.2d 799, 1971; and South Carolina Code of Laws, §24-76.)

Cooperatives and power companies alike (as well as their respectively served publics) stand in similar shoes when municipal electric systems, furnishing a purely proprietary, private-type service, put them to competitive disadvantage by conduct proscribed under the Sherman and Clayton Acts, *infra*. Cooperatives are unique in both the kind and degree of adverse consequences they must thereby suffer. Both from the record and from our Motion to file brief *Amici Curiae*, these consequences may surely by this Court be inferred to be of such enormity and pervasiveness as to qualify a different and perhaps even more precious concern for the judicial rectification of municipal tie-in practices than were the issue of interest

solely to the Respondent.

ARGUMENT

I. As to the "Question Presented"

Though arguing as *Amici Curiae*, we respectfully take issue with the wording of the "Question Presented" as stated by the Petitioners. We think the question presented is simply whether a political subdivision of a state, operating an electric system in retail market competition with investor-owned electric utilities and electric cooperatives, is subject to the Sherman and Clayton Acts. 26 Stat. 209 (1890), as amended, 15 U.S.C. §§1 and 2; and 33 Stat. 730 (1914), as amended, 15 U.S.C. §14. We respectfully argue that the question as stated by the Petitioners intimates an umbrella issue of law which, in its ultimate implications, could bring to question whether a city's monopoly of a police force could subject it to antitrust liability. We do not believe that anyone associated with any aspect of this proceeding considers that there is the remotest possibility that the Sherman and Clayton Acts could or should be so construed.

II. Adoption of the Respondent's Brief

We read thoroughly the briefs submitted at the various stages of this proceeding in the Fifth Circuit Court of Appeals. In anticipation, and indeed upon the assumption, that the briefs filed by the Respondent at the Fifth Circuit level will be substantially repeated in this Court, we hereby adopt Respondent's brief accordingly, except as qualified and supplemented following.

III. Qualified and Supplemental Argument

A. The cases already decided by this Court having a bearing on the question here presented are both consistent and consonant with the judgment and instruction rendered by the Fifth Circuit Court of Appeals in this case.

Petitioners sought dismissal of Respondent's counterclaim

alleging acts by Petitioners which would be violative of certain sections of the Sherman and Clayton Acts, on the theory that they, being arms of the State of Louisiana, are immune to those Acts. The primary cases in this Court bearing on this issue are: *Parker* v. *Brown*, 317 U.S. 341 (1943); *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773 (1975); and *Cantor* v. *Detroit Edison Company*, 428 U.S. 579 (1976).

We believe there is a fairly simple syllogism which reconciles not only all three of those cases, but the instant case with them:

First, *Parker* did not reach far enough to immunize the particular activities complained of by the Respondent. *Parker* said:

> "We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officials or agents from activities directed by its Legislature.
>
> * * * *
>
> "The Sherman Act makes no mention of the state as such, and gives no hint that it also intended to restrain state action *or official action directed by a state*." (Emphases supplied).

Parker addressed itself to *state* or *state*-directed action.

The Fifth Circuit in the instant proceeding ruled that the District Court should proceed further by way of inquiry as to whether the State of Louisiana had specifically authorized or directed the Petitioner Cities to participate in the type of antitrust conduct alleged. Presumably, if such an inquiry were to determine that the State of Louisiana *had* so intended, the Respondent's counterclaim must fall. Lacking such a determination, its counterclaim must be tried to the merits.

Second, in *Goldfarb*, this Honorable Court, citing *Parker*, said:

> "The threshold inquiry in determining if an anticompetitive activity is state action of the type the Sherman Act was not meant to proscribe is whether the activity *is required by the State acting as sovereign*. Here we need not *inquire* further into the state action question because it cannot fairly be said that the State of Virginia through its Supreme Court Rules required the anticompetitive activities of either respondent." (Emphases supplied; case citations omitted).

Goldfarb is wholly consistent and consonant with *Parker*, and indeed, like the Fifth Circuit in the instant case, recognizes that the question of immunity from Sherman and Clayton requires first a "threshold inquiry" as to whether the challenged activity "is required by the State acting as sovereign."

Farther on in *Goldfarb*, this Honorable Court said:

> "The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members. The State Bar, by providing that deviation from County Bar minimum fees may lead to disciplinary action, has voluntarily joined in what is essentially a private anticompetitive activity, and in that posture cannot claim it is beyond the reach of the Sherman Act." (Footnotes and citations omitted).

The analogy, it seems to us, is complete and unblemished: A group of citizens acting under the would-be shield of a municipal corporation, commit, for inurement to their own private constituency benefit, an act which is "essentially a private anticompetitive activity." That, purely and simply, is what the Petitioners allegedly do, and especially if they do it through a tie-in arrangement.

Third, *Cantor*, which was decided only last year, not only relies upon *Goldfarb* and *Parker* and cites them with approval, but supports the rationale of the Respondents in the instant

case in treating with a purely competitive, commercial activity by a regulated investor-owned utility. The rationale, it seems to us, is impenetrable and by this Court should be wholly accepted and affirmed:

> "Unquestionably there are examples of economic regulation in which the very purpose of the government control is to avoid the consequences of unrestrained competition. Agricultural marketing programs, such as that involved in *Parker*, were of that character. But all economic regulation does not necessarily suppress competition. On the contrary, public utility regulation typically assumes that the private firm is a natural monopoly and that public controls are necessary to protect the consumer from exploitation. There is no logical inconsistency between requiring such a firm to meet regulatory criteria insofar as it is exercising its natural monopoly powers and also to comply with antitrust standards to the extent that it engages in business activity in competitive areas of the economy. Thus, Michigan's regulation of respondent's distribution of electricity poses no necessary conflict with a federal requirement that respondent's activities in competitive markets satisfy antitrust standards." (Footnotes omitted.)

B. Congressional enactments with respect to antitrust activity, as well as other holdings of the courts, since enactment of the Sherman and Clayton Acts, are wholly consistent and consonant with the order and instruction of the Fifth Circuit in this case.

The Sherman Act was enacted in 1890, and the Clayton Act was enacted in 1914. Petitioners make much of the fact that Congress neither expressed specifically that states or their subdivisions would be subject to those Acts nor, since their enactment, has amended them to that effect. We submit that, while that may be true, it is no indication that those Acts are not to be applied where the activity complained of is of a

purely private nature and particularly when that activity has not been *required* by the state itself in the exercise of its *sovereign* powers. Shoring up that concept are numerous acts of Congress as well as court decisions. Consider:

— — FPC must pay heed to antitrust allegation of price squeeze and can give relief therefor in the level of the rate of return that is allowed. *Conway Corporation, et al.* v. *Federal Power Commission*, 510 F.2d 1264 (1975) and *Federal Power Commission* v. *Conway Corporation*, 96 S.Ct. 1999 (1976).

— — FPC not only must heed but it has authority to give relief with respect to other forms of antitrust conduct. *Gulf States Utilities Co.* v. *FPC*, 411 U.S. 747, 93 S.Ct. 1870, 36 L.Ed.2d 635 (1973); *Gulf States Utilities Company* v. *FPC*, 15 PUR 4th (1976).

— — Antitrust conduct is also forbidden by §10 (h) of Part I of the Federal Power Act. Part I of the Federal Power Act, 16 U.S.C.A. §§791-823. While preference for initial hydroelectric licensing is accorded states and municipals, the Act does not exclude them from application of §10 (h). Part I of the Act was enacted (1920) *after* both Sherman and Clayton, but *before Parker* was handed down.

— — The Federal Power Commission has authority under Part I of the Federal Power Act to require, as a condition of licensing, that the licensee will interconnect with and wheel power for Federal power systems. Part I of the Federal Power Act, 16 U.S.C.A. §§791-823; *FPC* v. *Idaho Power Company*, 344 U.S. 17. It can also insert other conditions to prohibit anticompetitive conduct. *Municipal Electric Association of Massachusetts, et al.* v. *Federal Power Commission*, 414 F.2d, 1206; *Re New England Power Company*, 83 PUR 3d 103.

— — The Federal courts represent a forum for direct relief

from anticompetitive conduct of public utilities, and these tribunals can grant such relief totally, notwithstanding the fact that partial relief could be granted by FPC. *Otter Tail Power Company* v. *United States*, 410 U.S. 366, 93 S.Ct. 1022, 35 L.Ed 359 (1973).

— — The Nuclear Regulatory Commission ("NRC," formerly the Atomic Energy Commission) also has the power and responsibility of so conditioning the issuance of licenses for nuclear power plants as to avoid or correct licensee activities inconsistent with the nation's antitrust laws and policies. National Atomic Energy Commission Act of 1954, as amended, 42 U.S.C.A. §2011 *et seq*. The Act not only does not exempt municipalities from these provisions; it apparently conceives them to be covered by Sherman and Clayton. *See* §2135(a) of the Act.

— — The NRC powers in this respect are such that they may require licensees to permit partial ownership of licensed nuclear facilities, and to provide wheeling, pooling, etc. *Toledo Edison Company, Cleveland Electric Illuminating Company*, Docket Nos. 50-346A, 50-500A, 50-501A, 50-440A and 50-441A, January 6, 1977.

From the foregoing one may easily surmise that Congressional intent with respect to Sherman and Clayton applicability to municipalities, while not out of harmony with *Parker*, is certainly *in* harmony with *Goldfarb*, *Cantor* and the Fifth Circuit's decision in this case.

IV. Legislative Mandate Test Not Only Would Not Offend Public Policies; It Would Affirm Public Policy As Evolved in Virtually All of the States Since Sherman and Clayton Were Enacted.

The Petitioners' most appealing but least logical argument is that, for a number of reasons, the "trier of fact" in determining whether the State of Louisiana intended for its municipalities to engage in the alleged antitrust activities "would have the

difficult job of determining whether 'the legislature contemplated the kind of action complained of' ". (Petitioners' Brief, p. 15). They augment their argument of "difficulty" by stating, on page 16 of their Brief, that, when they themselves act, "Government itself is the actor." In this latter argument they are palpably mistaken. While the Petitioners are creatures of the State of Louisiana, *they are not the State itself*. Petitioners even argue that the "age of many charters and the almost total lack of published legislative history available at the state level" is a reason to reverse the Fifth Circuit. *See* Petitioners' Brief at p. 19. They even tempt the Federal Courts to avoid "the burden of second guessing the purposes of state legislatures with little or no objective guidance from any source," (Petitioners' Brief, p. 20; footnote omitted); and they finally urge that to rule with the Respondent will be to impose great apprehensions and thus inhibitions on municipal decision-making because municipal officials no doubt will be fearful of both monetary and criminal sanctions.

A final argument of the Petitioners, at page 23 of their Brief, is that they "exist to carry out the popular will and are managed by officials subject to removal from office should the discharge of their duties not conform to the will and expectations of the electorate." *Query*: Would the inhabitant voters inside the corporate limits of the Petitioners be likely to censure their officials and re-call or fail to re-elect them for the reason that the anticompetitive conduct of the Petitioners' electric business *outside* town is bringing in revenues to subsidize all manner of municipal services *inside* town?

We respectfully argue that these fears not only are groundless and without merit, but that they reflect what is perhaps a more authentic concern of the Petitioners—that being that the judicial inquiry which the Fifth Circuit has ordered will, predictably and indeed, elicit a large volume of evidence *which shows without question that the State of Louisiana not only did not intend for its municipalities to deport themselves as here complained of, but quite the contrary*. The same may be

said with respect to every state in the nation. Consider:

— — Every state in the Union, including now even the states of Minnesota and Texas, have established regulatory agencies one of whose major purposes is to substitute regulation and service area assignments for wasteful competition resulting from duplication of services and facilities.

— — Certainly this is true of Louisiana. Although it already had a regulatory scheme for its investor-owned power companies, it also brought substantially under that scheme the electric cooperatives of that state just a few years ago. La. Revised Statutes, Title 45, §123.

— — With respect to the operation of municipal electric systems outside their corporate limits, the Louisiana Public Service Commission has held that the municipalities are indeed subject to the jurisdiction of that Commission. *Louisiana Power and Light Company* v. *City of Monroe and the City of Monroe Utilities Commission*, Order No. U-12654, Docket No. U-12654, February 5, 1975.

This Court should recognize the apparently (but not real) paradoxical relationship between the foregoing Louisiana developments and the facts that obtained in *Cantor*. Investor-owned companies, cooperatives and municipal electric systems are, to one extent or another, brought under regulation, particularly territorial (or competitive) regulation, in the State of Louisiana—as indeed is the case in most states with respect to power companies and Cooperatives. In the exercise of its regulatory powers, the State of Louisiana has thus said to its investor-owned, Cooperative and municipal jurisdictional utilities that wasteful duplication of services and facilities will not be tolerated—such wasteful duplication being a predictable by-product of "buying" electric customers by "baiting" them with other types of utility service *otherwise withheld* even though facilities capable of electrically serving them, owned by

others, are already in place and operation. The avoidance of such duplication has been mandated by La. Statutes, Title 45, §123. On the other hand, in *Cantor*, even though the State of Michigan through its public service commission had given its approval to the policy of furnishing light bulbs and financing the same through the utility's rates, this Court, and rightfully, denied the utility of state-derived immunity for the reason that that utility as Petitioners no doubt did here, asserted the *initiative* in the anticompetitive practice, and it was a practice of a purely *private* nature, certainly not the positive, sovereign action of the State.

No. It is not the fear of having to go through a maize of hearings with difficult problems of evidentiary proofs, or the resulting lack of courage and forthrightness on the part of the Cities' officials, that impels the Petitioners' emotional appeal in the latter portion of their Brief; it is, in all probability, their understandable expectation that the ordered inquiry will indeed elicit a wealth of information totally and utterly opposed to the position they take.

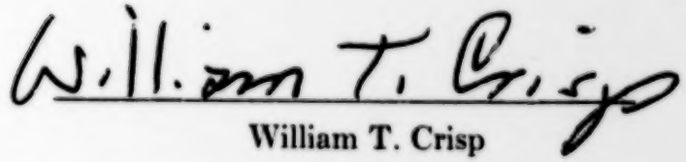
One final word needs to be said in this respect. The doctrine of *Parker*, as interpreted and applied by *Goldfarb*, *Cantor* and the Fifth Circuit in this instant case, while amply protective of *truly state-required activities in the exercise of sovereign power*, is not so tunnel visioned, is not so 12-gauge shotgunned, is not so unreasonable—as to permit nonrestrainable and nonredressable municipal conduct, acting in a purely private-type and proprietary operation, which imposes upon its truly private counterpart competitors the evils proscribed by Sherman and Clayton. Both logic and judicial restraint, reflected in all of the above referred-to decisions, should put to rest the fears of any who predict an illogical and destructive assault upon all state action of whatever kind.

CONCLUSION

For all of the foregoing reasons, the judgment of the Fifth Circuit should be Affirmed.

Respectfully submitted.

CRISP, BOLCH, SMITH, CLIFTON & DAVIS



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APPENDIX "A"

Amici Curiae and Pertinent Related Information

National Rural Electric Cooperative Association, ("NRECA") 2000 Florida Avenue, N.W., Washington, D.C., 20009. NRECA is the national trade-service association of its approximately 1,000 members, which are comprised preponderantly of rural electric distribution cooperatives but also of bulk power supply cooperatives, statewide trade-service associations of electric cooperatives and other related types of entities. (All of the additional Amici Curiae listed following are members of NRECA.)

Association of Illinois Electric Cooperatives, ("AIEC") 6460 South Sixth Frontage Road, Springfield, Illinois, 62708. AIEC is the statewide trade-service association of all of the 28 distribution electric cooperatives as well as the two power supply electric cooperatives corporately sited and operating in that state.

Association of Louisiana Electric Cooperatives, Inc., ("ALEC") 10725 Airline Highway, Baton Rouge, Louisiana, 70816. ALEC is the statewide trade-service association of 13 of the 14 distribution electric cooperatives and the one power supply electric cooperative corporately sited and operating in that state.

Fairfield Electric Cooperative, ("Fairfield") P. O. Box 150, Winnsboro, South Carolina, 29180. Fairfield is a distribution electric cooperative corporately sited and operating in the State of South Carolina. It is a member of SCECA and NRECA.

Georgia Electric Membership Corporation, ("GEMC") 148 Cain Street, Suite 845, N.E., Atlanta, Georgia, 30303. GEMC in the statewide trade-service association of all of the 42 distribution electric cooperatives corporately sited and operating in that state.

North Carolina Electric Membership Corporation, ("NCEMC") 3333 North Boulevard, Raleigh, North Carolina, 27611. NCEMC is the statewide trade-service association and power

supply agent of all of the 28 distribution electric cooperatives corporately sited and operating in that state.

Oklahoma Association of Electric Cooperatives, Inc., ("OAEC") 2325 N.E. Expressway, Oklahoma City, Oklahoma, 73111. OAEC is the statewide trade-service association of all 27 of the distribution electric cooperatives and of the two power supply electric cooperatives operating in the State of Oklahoma, all but one of which (Arkansas Valley Electric Cooperative, Ozark, Arkansas) are corporately sited in that state.

South Carolina Electric Cooperative Association, Inc., ("SCECA") 808 Knox-Abbott Drive, Cayce, South Carolina, 29033. SCECA is the statewide trade-service association of 17 of the 18 distribution electric cooperatives and of the two power supply electric cooperatives corporately sited and operating in that state.

Sioux Valley Empire Electric Association, ("Sioux Valley") Colman, South Dakota, 57017. Sioux Valley is a distribution electric cooperative corporately sited and operating in the State of South Dakota.

Texas Electric Cooperatives, Inc., ("TEC") 8140 Burnet Road, Austin, Texas, 78766. TEC is the statewide trade-service association of 78 distribution electric cooperatives and two power supply electric cooperatives corporately sited and operating in that state.

Virginia Association of Electric Cooperatives, ("VAEC") 5601 Chamberlayne Road, Richmond, Virginia, 23227. VAEC is the statewide trade-service association of all of the 15 distribution electric cooperatives corporately sited and operating in the State of Virginia, of both of the distribution electric cooperatives corporately sited and operating in the State of Maryland, and of the one distribution electric cooperative corporately sited and operating in the State of Delaware.

APPENDIX "B"

State Legislation Affecting Electric Cooperative Territorial Rights, Including Areas Annexed by Municipalities, Enacted Since January, 1970.

FLORIDA	Florida Stat. Annotated §366.04
GEORGIA	34B Ga. Stat. Annotated §301 *et seq.*
LOUISIANA	L.S.A.-R.S. §45;123
MINNESOTA	Minn. Stat. §216B.37
MONTANA	Montana Revised Codes Annotated, Title 70, §501 *et seq.*
OKLAHOMA	17 Oklahoma Stat. Annotated §189
PENNSYLVANIA	Penn. Stat. Annotated (Purdon) Title 15 §3277 *et seq.*
SOUTH DAKOTA	SDCL §49-34A-42 *et seq.*
TEXAS	Title 32 Tex. Civ. Stat. 1446C §49 *et seq.*

CERTIFICATE

I hereby certify that two copies of the foregoing ~~Motion~~ Brief have been served on counsel of record for all parties to this proceeding by placing the same in the United States mail, postage prepaid, this 15th day of June, 1977.

William T. Crisp

William T. Crisp